

**Sioux Products, Inc. and Production Workers Union of Chicago and Vicinity, Local 707, an affiliate of the National Production Workers Union. Cases 13-CA-19587, 13-CA-19616, and 13-CA-19636**

July 29, 1981

**DECISION AND ORDER**

On January 22, 1981, Administrative Law Judge J. Pargen Robertson issued the attached Decision in this proceeding. Thereafter, the Respondent and the General Counsel filed exceptions and supporting briefs.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order,<sup>1</sup> as modified herein.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Sioux Products, Inc., Addison, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following paragraph 2(c) and reletter the subsequent paragraphs accordingly:

"(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order."

2. Substitute the attached notice for that of the Administrative Law Judge.

<sup>1</sup> The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

**APPENDIX**

**NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

WE WILL NOT interrogate our employees concerning their activities on behalf of Production Workers Union of Chicago and Vicinity, Local 707, an affiliate of the National Production Workers Union, or any other labor organization.

WE WILL NOT threaten our employees with loss of profit sharing if they select the Union as their bargaining representative.

WE WILL NOT promise our employees retention of their profit-sharing plan and pay increases if the Union is voted out as their bargaining representative.

WE WILL NOT threaten our employees with loss of jobs and with difficulties with immigration authorities if they select the Union as their bargaining representative.

WE WILL NOT reprimand, discharge, or fail and refuse to reinstate our employees, because of their concerted activities or union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them in Section 7 of the National Labor Relations Act, as amended.

WE WILL offer Julia Arroyo immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges.

WE WILL make Julia Arroyo whole for any loss of earnings she may have suffered as a result of our discrimination against her, with interest.

WE WILL remove from our records references to disciplinary action against Julia Arroyo on February 5 and 12, 1980.

**SIoux PRODUCTS, INC.**

**DECISION**

**STATEMENT OF THE CASE**

J. PARGEN ROBERTSON, Administrative Law Judge: This case was heard before me in Chicago, Illinois, on October 6-9, 1980. The charge in Case 13-CA-19587 was filed on February 15, 1980; the charge in Case 13-CA-19616 was filed on February 25, 1980; and the charge in Case 13-CA-19636 was filed on February 29 and amended on March 6, 1980. The consolidated com-

plaint, which issued on April 21, 1980, alleges that Respondent engaged in numerous violations of Section 8(a)(1), and in conduct violative of Section 8(a)(3), by issuing reprimands and discharging employees Silvina Andrade and Julia Arroyo.

#### I. BACKGROUND<sup>1</sup>

General Counsel's allegations are centered around a union organizing campaign. Various 8(a)(1) allegations allegedly occurred during the campaign. A representation election was conducted by the Regional Office on February 1, 1980. The election resulted in a union victory. Subsequently, during February 1980, Respondent reprimanded and discharged employees Silvina Andrade and Julia Arroyo. General Counsel alleges that those actions violate Section 8(a)(3) of the Act.<sup>2</sup>

Spanish-speaking employees constitute the bulk of Respondent's work force. Most of the employees, including alleged discriminatees Andrade and Arroyo, do not speak English. However, many of Respondent's supervisors do not speak Spanish. Respondent employed several translators during its antiunion campaign. Additionally, Respondent regularly uses several employees for translation between supervisors and employees.

#### II. THE 8(A)(3) ALLEGATIONS (BACKGROUND)

##### A. *Julie Arroyo*

Julia Arroyo was employed from May 1975 until May 28, 1980, as an inspector. Her personnel file ("Master Record Chart") indicates that before February 1980 Arroyo's only disciplinary action included notations for wearing open toe shoes and being absent without calling in. Those two notations were made in July 1978.

Arroyo engaged in prounion activities during the union campaign. She served as the union observer during the election. Respondent's supervisors admitted knowing of Arroyo's prounion activities.

On February 5, Arroyo and three other employees<sup>3</sup> were called into the office of General Manager Maher where they were cautioned about personality problems.

On February 12, Arroyo received a warning because she went to the bathroom without first seeking permission from a supervisor. Respondent's employee handbook indicates that employees are required to acquire supervisory permission before leaving their work stations. However, Arroyo testified that it was the policy for employees to go to the bathroom without bothering to seek permission from a supervisor. Arroyo's testimony in that regard was supported by other witnesses. Respondent's

witness, Roci Andrade, admitted that she knew before the election Arroyo went to the bathroom without first getting permission. Jackie Haltmeyer, the supervisor who issued the warning to Arroyo on February 12, admitted on cross-examination that some of the women in her department did go to the "lunch truck" without getting permission.

On February 28, employee Roci Andrade complained to supervision that Arroyo had pushed her and called her a son of a bitch.<sup>4</sup> Respondent investigated the incident by questioning two employees. However, both of those employees told Respondent that they had seen nothing. Nevertheless, Arroyo was called in and discharged.

General Counsel alleges that Arroyo's warnings and discharge violated Section 8(a)(3).

##### B. *Silvina Andrade*

Silvina Andrade was employed by Respondent from January 1976 until February 27, 1980. Respondent stipulated that Andrade was prounion, and it was aware of that fact. Andrade engaged in prounion activities during the organizing campaign.

On February 18, Andrade received a warning and a 3-day suspension.

On February 27, Andrade was discharged allegedly for using profanity and throwing empty cardboard boxes in her work area.

General Counsel alleges that the February 18 warning and Andrade's February 27 discharge violate Section 8(a)(3).

Respondent contends that when Andrade reported to work on the evening of February 25-26 she became angry because her work area had not been cleaned by the prior shift. Andrade called the foreman over and used profanity in complaining that the area had not been cleaned. Subsequently, according to Respondent's version of events, Andrade, in a fit of anger, began tossing about empty 2-by-1-1/2-foot cardboard cartons. Those events launched a process which resulted in Andrade's discharge 2 days later.

#### III. THE 8(A)(3) ALLEGATIONS (CONCLUSIONS)

##### A. *Arroyo's Discharge*

Respondent's defense to its discharge of Julia Arroyo is rooted basically in two incidents. In the first incident, Arroyo was reprimanded on February 5. The second resulted in her discharge.

Personnel Manager Carol Gibson was asked about the February 5 incident. Gibson began her explanation by stating that Julia Arroyo "had been harassing and bumping and pushing employees. She was given a verbal warning, a rather strong verbal warning, that it was not to happen again or she would be fired."

Gibson testified that Maricella Ramos told her that Jeanete Borjorquez was crying because of an incident with Julia Arroyo. Maricella Ramos is an employee who speaks both English and Spanish. Frequently, Ramos

<sup>1</sup> Respondent, Sioux Products, Inc., which is engaged in the business of manufacturing plastic products at its Addison, Illinois, facility, admitted the commerce allegations in the complaint. On the basis of that admission, I find that Respondent is and has been at all times material herein an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act. Respondent also admitted the status of the Charging Party. I therefore find that the Charging Party is and was at all times material herein a labor organization within the meaning of Sec. 2(5) of the Act.

<sup>2</sup> The complaint also alleges that five other employees were illegally reprimanded. However, no evidence was offered in support of the allegations regarding those five.

<sup>3</sup> Originally five employees were called in, but one, Eloisa Saucedo, left. See discussion under conclusions, below.

<sup>4</sup> The expression allegedly used by Arroyo was "haja de la Chingada."

handled translations between Gibson as well as other supervisors and Spanish-speaking employees. Ramos, who admittedly opposed the Union, is the sister of employee Roci Andrade, the employee who had the run-in with Julia Arroyo on February 28, which resulted in Arroyo's discharge. Jeanete Bojorquez did not testify.

According to the testimony of Gibson, she called in Jeanete Bojorquez and asked Bojorquez if she was having problems. Gibson testified that Bojorquez said yes, she was having problems with Julia, and that "other girls were having problems with Julia." Bojorquez indicated that Anna Garcia and Eloisa Saucedo were having problems with Julia and that Maria Anaya was also giving Anna Garcia problems. After being asked why, Gibson testified that Bojorquez told her that they were being troubled because they did not vote for the Union.

Gibson was asked if Bojorquez described her run-in with Julia Arroyo. Her response was:

Yes. She had asked Julia, "Is it true that you can get me fired, or you can get any of us fired, now that the Union is in?" And they had a screaming match, and there were other friends of Julia in the washroom or lunchroom, whichever it was, I don't remember. But her problems with Julia—that is what got her to crying, the run-in in the washroom or lunchroom, but she had had problems with her on the floor, I learned later.

As a consequence of her meeting with Bojorquez, Gibson went into General Manager Jay Maher's office and told him that Bojorquez had been complaining about Julia. Gibson related to Maher what Bojorquez had said and commented, "We better nip this in the bud, or we are going to have a brawl out there and caps are going to fly all over the place. I was fed up."

General Manager Maher also testified about this incident. According to him, Gibson came to him and told him that "she had employees complaining because other employees were harassing them and it was becoming a very difficult and dangerous situation. And she said, 'We're going to have a riot here if we don't do something about it.'" Maher testified that Gibson told him that "Jeanete Bojorquez [was] complaining about Julia Arroyo bumping her and harassing her verbally. She said that Anna Garcia had complained that she was being harassed by Julia and by Maria Anaya at her work station. And [Gibson] said that Eloisa, I can't remember her last name, was afraid to go to the washroom alone because of the harassment that was going on in the washroom."

Subsequently, a meeting was held in Maher's office. Maher testified that he had the supervisor, Jackie Haltmeyer, bring in "Eloisa, Maria Anaya and Jeanete Bojorquez, Julia Arroyo and [Anna Garcia]." Maricella Ramos was also in the meeting as the translator. Maher testified, "I told Julia that Jeanete Bojorquez had accused her of bumping her and accused her of harassing her, (and I also told her that Anna Garcia had complained that Julia had been harassing her. And I told Maria Anaya that Anna had been harassed by her. And that Eloisa, we had found, or heard, that Eloisa was afraid to go to the

washroom because of harassment to her by other employees."

Maher testified that at that point during the meeting, "Eloisa said that she didn't know anything about any kind of harassing and that she didn't want to have any part of the meeting. And that she had no complaint. And she acted very scared and nervous, and I just excused her because she had no complaint against the two girls."

Maher then told the remaining women, "We have a production facility here and that we need to get on with the production, that the union election was past history, that the outcome of the election was to be determined by the National Labor Relations Board and that anything that they say to one another, or any kind of harassment, any kind of intimidation isn't going to make any difference and that we have to all go back to work and do our jobs and stop harassing one another." Maher was asked if Jeanete Bojorquez had anything to say during the meeting. He responded that Bojorquez had said at the meeting that Julia was acting with authority and saying that she had authority now that the vote was on. Maher testified that Julia Arroyo said "that she wasn't really saying that, that she was just trying to explain to her that she had no authority, that she had no power."

Maher testified that Carol Gibson then told the women "that any future harassment, or any future problems relating to harassment, or any kind of violence, or any of these related problems, would go without a warning and anybody involved in it would be discharged."

Written notations were made in the personnel files of the four women who remained in the February 5 meeting in Maher's office. However, those notations differ. The file of Julia Arroyo for example, reflects the following notation: "Verbal warning—antagonizing & intimidating employees—next offense—discharge."

The personnel file of Jeanete Bojorquez indicates: "Involved in dispute with Julia Arroyo, Maria Anaya and Anna Garcia over Union. Although on the receiving end and not one of the aggressors—all girls to air their differences on the outside."

Subsequently, on February 28, Supervisor Jackie Haltmeyer, Maricella Ramos, and Roci Andrade came to Carol Gibson's office. Gibson testified that Roci Andrade appeared upset and, through Maricella Ramos who translated, Andrade told Gibson that she was going to get her badge, and Julia pushed her and called her a son of a bitch. Gibson testified that Andrade told her that when she came back, Julia called her a son of a bitch again. Gibson testified that she asked Andrade to show her how hard she had been pushed, after which Gibson commented, "All right. I will take care of it."

Gibson testified that she then went to find General Manager Maher. Gibson told Maher she was going to find Hidding and talk to him, "that (Julia) should be fired. We're going to have a riot out there." Gibson testified that she then contacted Hidding, who approved the discharge of Arroyo.

Gibson testified that at the end of the shift Julia Arroyo was called in along with her husband, Eulogio. Present in the personnel office were Gibson, General

Manager Maher, and employee Brent Borgerson. Borgerson was present to translate the conversation.

Gibson testified that she told Julia that Roci had reported her pushing her and calling her a son of a bitch. Gibson testified that Arroyo replied, "Well, she threw a stick of grip-its at me." Gibson testified that Arroyo asked, "Why did you talk to Roci and not to me?" General Manager Maher said, "We are talking to you." Gibson testified that Julia's husband, Eulogio, was interrupting throughout the conversation because he was upset that Julia had received a warning notice for going to the bathroom. Gibson testified that Eulogio said, "You allow me to go to the bathroom anytime I want. Why can't [Julia]?" Gibson testified that she responded, "That is it. I don't want to discuss it any further. Julia, you are fired."

Later in the hearing, Gibson testified that Roci Andrade had told her that employees Hilda Reyes and Julia Reyes were in the area and had possibly witnessed the incident between her and Julia Arroyo. Gibson testified that she called in first Hilda Reyes and later Julia Reyes. In both instances, she asked the particular employee if the employee had noticed any kind of pushing between Roci and Julia. Both Hilda and Julia Reyes told Gibson that they had not seen such an occurrence. As to each employee, Gibson then asked, "Would you tell me if you did?" Both Hilda and Julia Reyes responded that, yes, they would have told her if they had witnessed the occurrence.

In assessing the allegations regarding Julia Arroyo, I am mindful of the seriousness of Respondent's allegations. However, on close examination the evidence is convincing that neither Carol Gibson nor Jay Maher had a sound basis to treat Arroyo with disparity.

As to the February 5 warning, the evidence demonstrates that Gibson called in Arroyo (along with the other employees mentioned above) and, subsequently, placed a warning in Arroyo's file, on firsthand evidence gained solely through her conversation with employee Jeanete Bojorquez. Gibson testified that Bojorquez related her conversation with Arroyo as follows:

[Bojorquez] had had [sic] asked Julia, "Is it true that you can get me fired, or you can get any of us fired, now that the Union is in?" And they had a screaming match, and there were other friends of Julia in the washroom or lunchroom, whichever it was, I don't remember. But her problems with Julia—that is what got her to crying, the run-in in the washroom or lunchroom, but she had had problems with her on the floor, I learned later.

Although antiunion employees Anna Garcia and Eloisa Saucedo were also called into Maher's office, the evidence failed to demonstrate that Gibson had talked to either beforehand. Moreover, Eloisa Saucedo indicated during the meeting that she had no complaints.

Although Anna Garcia testified during the hearing that she had experienced problems with Julia Arroyo, the record failed to show that either Gibson or Maher, or any other supervisor, had checked with Garcia before reprimanding Arroyo. Additionally, Garcia testified that

her problems with Arroyo had existed since July 1979. However, according to Garcia, she never complained to supervision.

Therefore, I find General Counsel's arguments persuasive. Gibson's reaction to Bojorquez' February 5 comments was not based on the facts available. Gibson testified that Arroyo had been "harassing and bumping and pushing employees." According to Maher, Gibson told him the same thing. He then used similar expressions in the February 5 meeting with the four women. However, according to Gibson's testimony, Bojorquez had said nothing about bumping and pushing. She said only that she and Arroyo had "a screaming match" as a result of Bojorquez' questions to Arroyo.

The above evidence, and the obvious disparity in the wording of the warnings issued Arroyo on the one hand, and Bojorquez on the other, convinces me that Gibson's actions were precipitated by factors other than those presented by Bojorquez. In view of her admitted hostility to the Union, her knowledge of Arroyo's union activity and her knowledge that the run-in between Arroyo and Bojorquez involved the Union, I am convinced that the warning issued Arroyo on February 5 would not have been issued but for her union activities.<sup>5</sup>

I am also convinced that Respondent would not have discharged Julia Arroyo but for her union activities. In that regard I find most disturbing the manner in which Personnel Manager Gibson investigated the February 28 incident between Roci Andrade and Julia Arroyo.

When Roci Andrade told Gibson of her run-in with Julia Arroyo, Gibson went to General Manager Maher. Maher told Gibson to investigate the allegations. Subsequently, Gibson talked to the two employees Roci Andrade had mentioned as being in the area—Hilda and Julia Reyes. Both employees denied seeing anything between Julia Arroyo and Roci Andrade. Nevertheless, Carol Gibson took no further action toward the investigation. She did not even bother to confront Julia Arroyo. Instead, she, along with Maher and Hidding, made the decision to discharge Arroyo.

Brent Borgerson, who translated Julia Arroyo's termination interview, testified that immediately upon Arroyo entering the meeting, he was handed a "ticket" and told to read it to Arroyo. Borgerson testified, "The ticket said 'dismissal' on it. It was a dismissal notice." Borgerson recalled, contrary to the testimony of General Manager Maher, that Arroyo denied she had pushed Roci Andrade. In fact, according to Borgerson, Arroyo claimed that it was Andrade who pushed her.<sup>6</sup>

The evidence leaves little doubt that during February 1980, and for sometime earlier, some employees in Respondent's facility were experiencing conflicts. Undoubt-

<sup>5</sup> See *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

<sup>6</sup> Borgerson, who was a supervisor at times both before and after the February 28 incident, even though he was a nonsupervisory employee then, impressed me as being more candid than Gibson or Maher. He was called by Respondent. Moreover, during most of the hearing he sat at Respondent's table and assisted them as a translator. In view of his role, I do not view it likely that he would knowingly testify falsely to Respondent's detriment. Therefore, as to the termination interview, I credit his testimony over that of either Maher or Gibson.

edly, some of those conflicts resulted from different views regarding unionization. The Act does not insulate any employee, whether pro- or antiunion, from disciplinary action because of misconduct. However, the Act does serve to see that no employee is treated in a disparate manner because of her views about unionization.

I find the evidence herein does demonstrate that Julia Arroyo was treated in a discriminatory manner. Carol Gibson was asked why she had not confronted Arroyo before deciding to discharge her. Gibson first responded, "Well, for the same reason I did not spend much time with Roci. When they are in my office, we are not producing parts." Then she testified, "Oh, I had no reason not to believe that this did not happen. I planned on hearing her side of the story after the shift, but I did not question it at all." Gibson was then asked why she did not question the matter. She responded, "Because of the incident with Anna Garcia and Jeanete and Maria Anaya,<sup>7</sup> several things that had been said to me by Mari-cella. One in particular that sticks out in my mind . . . that Julia was telling the people that now the Union was in, she was the big boss."

The evidence convinces me that Respondent, through Gibson, was predisposed to condemn Julia Arroyo on both February 5 and 28. That predisposition occurred in such proximity to the union campaign and election that it is difficult to ignore that a connection existed between the events. When that timing is considered alongside evidence of Respondent's union animus,<sup>8</sup> the admitted animus of various supervisors, including Gibson, and Respondent's awareness of Arroyo's union activities, the evidence becomes most convincing that Respondent took the opportunities presented to rid itself of an undesirable union advocate. Moreover, the evidence did not establish that Arroyo was more responsible for the alleged conflicts than several antiunion employees. Therefore, I find in support of General Counsel that the true reason for Arroyo's warnings and discharge was not her misconduct, but was in fact her union activities.<sup>9</sup>

In view of the testimony from Supervisor Haltmeyer<sup>10</sup> that other employees were allowed to leave the work area without first obtaining permission in accord with the published rules, I find that Respondent also violated Section 8(a)(3) by warning Julia Arroyo because she went to the bathroom on February 12.

#### B. Andrade's Discharge

As in the case of Julia Arroyo, the timing of Respondent's actions against Silvina Andrade creates concern as

to Respondent's motives. However, unlike the situation regarding Arroyo, the merits of the allegations regarding Andrade depend almost entirely on Andrade's testimony. While I find that a great deal of the testimony from Respondent's witnesses is difficult to credit, I also find that Andrade's testimony strained the limits of believability. It appears from Andrade's testimony that she did absolutely nothing which would give Respondent the slightest grounds for disciplinary action during the last 2 weeks of her employment. Nevertheless, Respondent first suspended her for 3 days, then discharged her.

There are numerous occasions when the testimony of Andrade simply does not withstand close scrutiny. For example, in her testimony about her 3-day suspension, she testified at one point that no one translated her warning ticket. Later, she testified that she was told that she was being given the ticket because she was sweeping up.

According to other testimony, Andrade's suspension was explained to her during a meeting which included several people, including Brent Borgerson who translated.

Borgerson testified that he actually translated in two meetings regarding Andrade's suspension. The first, in Jackie Haltmeyer's office, involved an explanation of the suspension. Later, he was called to Carol Gibson's office because Andrade was trying to have the "ticket" taken away.

I also find incredible Andrade's testimony that she was not told she was being warned for missing work on Friday, February 22.

Despite Andrade's testimony to the effect that she did nothing which justified Respondent's actions in disciplining her, testimony from Supervisor Albert (Alberto) Saenz that Andrade's actions became so obnoxious that he spoke to Andrade's husband about her problem, went un rebutted. In response to the question, "Did you speak to [Silvina Andrade] at all about taking extended breaks?" Saenz replied:

Yes, I did. I spoke to her a couple of times. In fact, I even went so far as to speak to her husband, Fulgencio, and made him aware of the fact that she was taking long breaks. I asked him to talk to her. In fact, I all but pleaded with the guy because I knew he wanted to be aware of what was going on. He said he would talk to her.

Therefore, I am unable to credit Andrade's testimony to the effect that she did nothing to warrant her warnings or her discharge.

I am aware that three employees testified they did not see Andrade throw boxes on September 25. However, all three admitted leaving the area within a few minutes. Therefore, their testimony is not probative of the contention that she did not subsequently throw boxes. I am also aware of discrepancies in the testimony of Respondent's witnesses, Albert Saenz and Guillermo Carrillo, regarding the box-throwing incident. That, along with the timing of the action against Andrade, Respondent's union animus and its knowledge of her union activities, makes this decision a difficult one. However, it is General Counsel's, not Respondent's, burden to sustain the allega-

<sup>7</sup> Evidently, Gibson was referring to the February 5 incident.

<sup>8</sup> As to animus, see my findings below regarding the 8(a)(1) allegations.

<sup>9</sup> See *Joseph Pollak Corp.*, 232 NLRB 825 (1977); *Tama Meat Packing Corp.*, 230 NLRB 116, 127 (1977); *Florida Medical Center, Inc. d/b/a Lauderdale Lakes General Hospital*, 227 NLRB 1412, 1413 (1977).

<sup>10</sup> Additionally, I note that another of Respondent's witnesses, Guillermo Carrillo, testified in corroboration of Arroyo's testimony about the "bathroom policy," in his pretrial affidavit, which was received in evidence. Carrillo also worked under the supervision of Jackie Haltmeyer. Carrillo was a leadman on the second shift. His affidavit states (in part):

It is not necessary for an employee to ask permission to use the washroom either from the leadman or the supervisor. This is the policy of the secondary department on the second shift. I don't know about the other departments or the other shifts.

tions. In view of my inability to credit Andrade, I find that General Counsel has not carried that burden.

It appears that when Andrade arrived at work on February 25, from her suspension, she permitted her anger over the suspension to spill out. She engaged in actions which approached tantrum proportions, which included her tossing boxes around in her work area. Activity of that type is not something an employer is required to tolerate. Unlike the situation surrounding Arroyo's discharge, the box-throwing incident was fully investigated to the point of confronting Andrade with the allegations at a point well in advance of the final decision to discharge her. Therefore, I find Respondent has demonstrated that Andrade's suspension and discharge "would have occurred absent protected activities."<sup>11</sup> I find that Respondent did not violate the Act by reprimanding and discharging her.

#### IV. THE 8(A)(1) ALLEGATIONS (CONCLUSIONS)

##### A. Loss of Benefits

Julia Arroyo testified that she was present during a meeting of all the first shift employees on the day before the February 1 election. At the meeting, the employees were addressed by Respondent's translators, Pan Blanco<sup>12</sup> and John Garza.<sup>13</sup> Arroyo testified that both White and Garza spoke to the employees. During the course of the address, employees were told that if the Union won, the employees would lose benefits and would completely lose the profit-sharing plan. Employees were also told that if the Union did not win, they would have their profit-sharing plan. Arroyo testified they were also told that they would receive two increases a year, and better treatment; and that Respondent would become more aware of the treatment employees were receiving because up until then they were not too aware of the kind of treatment the employees had received.

Arroyo testified that on the same day John Garza came to her work station with the owner of the Company (Walter Hidding). Garza translated for Hidding. Arroyo testified that she was asked to help Hidding with her vote, that she was told he would give her a pay increase, and that he was going to try to resolve her problems. Arroyo quoted Hidding through John Garza as saying, "Julia, help me with your vote. You know if the Union wins, you're going to lose your profit-sharing, and for you, you've been here a long time, that's a considerable amount of money. So help me with your vote and

the money is yours, and you will have two salary increases per year."

Employee Angelina Lopez testified that approximately a week before the election Hidding came to her machine with Pan Blanco. Blanco translated for Hidding. Lopez testified that she was shown a slip of paper with an amount of money written on the slip, and they told her it represented the amount of money she had saved there. Hidding said that if an employee worked there for 5 years, they would get the money; that if the Union comes in, then the money would be frozen.

Employee Hilda Reyes testified that she attended a meeting at the Company on the day before the election. Reyes testified that about 10 employees were present, and that they were addressed by John Garza. Reyes testified that Garza was showing them ballots on how to vote and that she remembered him saying something about "we could lose profit-sharing or something like that."

Walter Hidding admitted that he instituted a campaign to inform the employees about their profit-sharing plan. According to Hidding, he instituted that campaign because the Union had passed the word around that employees had no profit-sharing plan. Hidding admitted that various employees were informed as to how much they had accumulated in their particular profit-sharing situation. However, he denied any employee was threatened with loss of the profit-sharing plan if the Union was selected. Brad White's testimony supported that of Hidding. John Garza did not testify.

I find the testimony of the employees convincing. Julia Arroyo impressed me as a candid witness.<sup>14</sup> Moreover, both Angelina Lopez and Hilda Reyes were still employed by Respondent at the time of the hearing herein. Both testified pursuant to subpoenas from General Counsel. I was impressed that neither Lopez nor Reyes appeared anxious to testify on behalf of General Counsel against Respondent. I found both to be straightforward and candid. Their testimony, which I credit, reveals threats to deprive the employees of benefits if the Union succeeded in the election.

##### B. Interrogation

Former employee Eulogio Arroyo testified that he had a conversation at the plant with John Garza on the day of the election. Arroyo testified that Garza asked him "where had I worked with a union." Later, during the

<sup>11</sup> *Wright Line, a Division of Wright Line, Inc., supra.*

<sup>12</sup> Brad White testified that he was referred to as "Pan Blanco" by the Spanish-speaking employees.

<sup>13</sup> The evidence establishes that Brad White (Pan Blanco) and John Garza were employed as Respondent's agents to assist it in its campaign against the Union. In that regard, the evidence reflected that both White and Garza engaged in antiunion campaigning among the employees, both individually and in groups, on behalf of Respondent. On occasion, White and Garza translated for Respondent's supervisory or management personnel to Spanish-speaking employees in the presence of the particular management official or supervisor. On other occasions, White and Garza individually communicated with employees. I find, as to all the incidents covered in the record, Garza and White were acting as agents of Respondent within the meaning of Sec. 2(2).

<sup>14</sup> On the other hand, I was not impressed with the demeanor of Brad White. White generally denied all the allegations of 8(a)(1) activity. Moreover, he testified that no one in his presence made the allegedly violative comments. In that regard he testified, among other things, that Walter Hidding followed the text of his speech to employees. However, on at least one occasion, according to General Manager Maher's testimony, Hidding was making the speech to an English-speaking employee simultaneously with the address being translated by White to the other employees. Under these circumstances, it would be impossible for White to know whether Hidding followed the text. I am convinced that White was principally occupied with testifying in a manner to please Respondent. Therefore, I do not credit his testimony to the extent it conflicts with credited evidence. Since all of General Counsel's witnesses were Spanish-speaking, none were addressed directly by Hidding. Therefore, the testimony of Hidding, who does not speak Spanish, is not at issue.

same conversation, Garza asked him which he had voted for, the Company or the Union.

Marta Arroyo testified that she had a conversation with John Garza on the day before the election. Arroyo testified that Garza showed her a paper and asked her how she was going to vote. Arroyo testified that she told him she did not know.

Julia Arroyo testified that she had a conversation with Hidding and John Garza on the 27th.<sup>15</sup>

Arroyo testified that during that conversation "Mr. Garza asked me who I was going to vote for and I said that was my problem. He said, 'You already know, you know that you are going to vote for the Union since you are going to be seated at the table for the Union. You know very well that you are going to represent the people in the Company for the Union.' I said, 'No, sir, you're mistaken.'"

As indicated above, John Garza did not testify in these proceedings. I find the testimony of the employees above to be credible. Respondent's action in that regard constitutes interrogation in violation of Section 8(a)(1) of the Act.<sup>16</sup>

### C. Threats

Employee Marta Arroyo testified that she attended a meeting along with other employees in Carol Gibson's office about 15 days before the election. Arroyo testified that Brent Borgerson translated for Carol Gibson to the employees. She testified that they were told that they should not get involved with the Union because they were people who needed to work and could not afford to be laid off. Arroyo testified that Gibson, through Borgerson, told them she was trying to help them, "the Mexicans," to understand. She testified that the employees were told that if they continued with the union support, there would probably be strikes and the Company would be closed; that, if they struck and the Company closed, they would not be working.<sup>17</sup>

Silvina Andrade testified that she had attended a company meeting among the employees approximately 2 weeks before the election and that the employees were addressed by John Garza. Andrade testified that Garza told them that, if the Union gets in, "they are going to get us in a strike and that in the event of a strike, the factory was not going to close down, but that the factory would get new employees and 'we would be fired.'"

Andrade also testified that she was called into a meeting on the day before the election. Appearing for the Company were Pan Blanco, John Garza, and Hidding. Andrade testified that Hidding was reading to them and Blanco was translating. She testified that she recalled the employees being asked, "Why do we want a union to come in if they are going to take everything they got for

us in benefits? That is, the Union doesn't get in, that he would be able to get us more benefits and better raises." She testified that they also said "there would be a strike if the Union gets in, and all of those who go on strike would not be able to work in any other factories and they won't permit us to get compensation and we will see if the Union will give us enough to eat on." She testified that they also said "all of the workers who are not working under their own name and do not have their social security card, or do not have their papers, haven't got the proper documentation, that they will get rid of them and the younger employees."

Angelina Lopez testified that she attended a meeting with some eight or nine other employees 2 days before the election. She testified that the employees were addressed by John Garza. According to Lopez, Garza told them that, if the Union got in, "those of us who do not have the proper documentation will be out. In other words, those of us who do not have our own social security card would be out if the Union comes in."

Employee Humberta Lopez testified about a meeting among employees approximately 2 weeks before the election. Employees were addressed by John Garza and a person introduced by him as the son of the owner of the Company. That meeting was held in an office in the factory, and there were seven or eight employees present. Lopez testified that John Garza talked to them about what would happen if the Union came into the plant. According to her testimony, Garza said "that things could go badly for us because immigration could come for us."

As indicated above, I am unable to credit the testimony of Silvina Andrade to the extent it conflicts with other testimony. However, as to her testimony regarding her conversation with John Garza, I credit that testimony since Garza did not testify. As to the other witnesses, Marta Arroyo, Julia Arroyo, Angelina Lopez, and Humberta Lopez, I credit their testimony in full. The above testimony demonstrates that Respondent violated Section 8(a)(1) of the Act by threatening employees with loss of jobs and with possible difficulties with immigration because of their union activities.<sup>18</sup>

### CONCLUSIONS OF LAW

1. Respondent, Sioux Products, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Production Workers Union of Chicago and Vicinity, Local 707, an affiliate of the National Production Workers Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent, by interrogating its employees concerning its employees' union activities; by threatening its employees with the loss of their profit-sharing plan if they selected the Union as their bargaining representative; by promising its employees retention of their profit-sharing

<sup>15</sup> Apparently, Arroyo was referring to January 27, 1980.

<sup>16</sup> *PPG Industries, Inc., Lexington Plant, Fiber Glass Division*, 251 NLRB 146 (1980).

<sup>17</sup> I find Brent Borgerson's testimony to be more reliable than that of Carol Gibson. However, Borgerson's testimony at the hearing conflicted with his pretrial affidavit to the Region. Moreover, Borgerson admitted that on occasions when he was translating, he "wasn't really absorbing everything." Therefore, I do not credit his testimony, or that of Carol Gibson, to the extent it conflicts with the testimony of Marta Arroyo, whom I credit.

<sup>18</sup> The evidence failed to prove the complaint allegations that Brent Borgerson and Maricella Ramos were supervisors at material times. However, both translated supervisors' comments to employees on several occasions. Since those translations were made on behalf of supervisors, I find that Borgerson and Ramos were, on those occasions, agents.

plan and pay increases if the Union was not selected as their bargaining representative; and by threatening its employees with loss of jobs and with possible difficulties with immigration authorities if the Union were selected as their bargaining representative, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. Respondent, by reprimanding and discharging its employee Julia Arroyo, and thereafter failing and refusing and continuing to fail and refuse to reinstate Julia Arroyo because of her union activities, has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

5. Respondent did not otherwise engage in unfair labor practices in violation of Section 8(a)(1) and (3) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom, and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent unlawfully discharged Julia Arroyo, I shall recommend that Respondent be ordered to offer her immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges. I shall further recommend that Respondent be ordered to make Julia Arroyo whole for any loss of earnings she may have suffered as a result of the discrimination against her. Backpay shall be computed as prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>19</sup>

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>20</sup>

The Respondent, Sioux Products, Inc., Addison, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Interfering with, restraining, and coercing the employees in the exercise of rights guaranteed to them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act, by interrogating its employees concerning its employees' union activities; by threatening its employees with loss of profit-sharing plan if they select the Union as their bargaining representative; by promising its employees retention of their profit-sharing plan and pay increases if the Union is voted out as their bargaining representative; and by threatening its employees with loss of jobs and with difficulties with immigration authorities if they select the Union as their bargaining representative.

(b) Reprimanding, discharging, and thereafter failing and refusing to reinstate its employees because of those employees' concerted activities or union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist a labor organization, or to refrain from any and all such activities.

2. Take the following affirmative action designed and found necessary in order to effectuate the policies of the Act:

(a) Offer Julia Arroyo immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or other rights and privileges; and make Arroyo whole for any loss of earnings she may have suffered as a result of the discrimination against her in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Remove all references in their records to the February 5 and 12, 1980, disciplinary actions against Julia Arroyo.

(c) Post at its facility in Addison, Illinois, copies<sup>21</sup> of the attached notice marked "Appendix."<sup>22</sup> Copies of said notice, on forms provided by the Regional Director for Region 13, after being duly signed by an authorized representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 13, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

<sup>19</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

<sup>20</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided by Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>21</sup> The posted copies should include copies translated into all languages necessary to afford all employees an opportunity to read the notice.

<sup>22</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."